

1092

VOLUNTEER FIREMEN, NOT QUALIFIED AS MEMBER OF PENSION FUND—MEMBERS OF VOLUNTEER'S DEPENDENTS FUND—§§741.01, 3310.09, R.C.

SYLLABUS:

Volunteer firemen do not qualify for membership in the Firemen's Relief and Pension Fund authorized by Section 741.01, Revised Code; and Section 3310.09, Revised Code, requires political subdivisions and fire districts employing volunteer firemen to be members of the Volunteer Firemen's Dependents Fund and to pay the premium required by said section.

Columbus, Ohio, January 19, 1960

Hon. James A. Rhodes, Auditor of State
State House, Columbus, Ohio

Dear Sir:

I have your request for my opinion reading as follows:

“The City of Struthers employs more than two full-time members in its Fire Department by reason whereof it has established a Firemen's Pension Fund which covers regular and volunteer firemen. This Fund was established in accordance with the provisions of Sections 741.01 to 741.25 of the Revised Code.

“Inasmuch as the City of Struthers also utilizes the services of volunteer firemen, it has in accordance with the provisions of Section 3310.09 of the Revised Code paid to the Treasurer of the State of Ohio to the credit of the Volunteer Firemen's Dependents Fund a premium of \$500.00.

“Upon the advice of the City Solicitor of the City of Struthers the City Auditor of Struthers has made application for the refund of the amount paid to the Volunteer Firemen's Dependents Fund on the basis that the volunteer firemen of that city are covered by the provisions of the Firemen's Pension Fund which it has had established for some years. Your attention is directed to Section 741.12 of the Revised Code which requires a deduction from the salaries of members of the fire divisions of a municipal corporation of a certain sum, to wit, 4% of the salary to be paid in the Firemen's Relief and Pension Fund.

“It is my understanding that the volunteer firemen do not receive any salary for their services and, in some cases, only a nominal or token payment for the services which they render as

such volunteer firemen. In those cases where no payments are made obviously no deduction can be made for a contribution to the Firemen's Relief and Pension Fund. To protect the dependents of such volunteer firemen Chapter 3310 of the Revised Code was enacted. Section 3310.01, Paragraph B, of the Revised Code, defines a volunteer fireman.

"In view of the application for a refund a formal opinion is respectfully requested:

"1. Whether or not a municipality, of city status, having a Firemen's Relief and Pension Fund and also employing volunteer firemen who may or may not contribute to such a Fund are eligible to share in the benefits of such a Fund.

"2. Whether or not such a municipal corporation of city status may, in addition to maintaining a Firemen's Relief and Pension Fund, also become a member of a Volunteer Firemen's Dependents Fund and participate in the benefits of such a Fund, as is set forth by Sections 3310.01, et seq., of the Revised Code, and also to make the contribution to such Fund as required by Section 3310.09 of the Revised Code.

"3. If you hold that such a city may not participate in the Volunteer Firemen's Fund or expend public funds for membership, whether or not the Treasurer of State may refund the contribution made under Section 3310.09 of the Revised Code out of the funds paid into the State Treasury to the credit of the Volunteer Firemen's Dependents Fund.

"An early formal reply is requested."

Section 741.01, Revised Code, defines "members of the fire department" and "member of the fund" of firemen's relief and pension fund, and reads as follows:

"As used in sections 741.01 to 741.25, inclusive, of the Revised Code:

"(A) 'Member of the fire department' means any person who receives an original appointment as a fireman from a duly established civil service eligible list, or who is appointed to a position in a fire department pursuant to section 737.22 of the Revised Code, or who, on September 25, 1947, was contributing two per cent of his annual salary to a fireman's relief and pension fund established pursuant to section 741.02 of the Revised Code.

"(B) 'Member of the fund' means any person who is contributing four per cent of his annual salary to the firemen's relief and pension fund established pursuant to section 741.02 of the Revised Code, or who is receiving a pension or disability benefits from such fund as a result of service in the fire department."

In Opinion No. 2645 of the Attorney General for the year 1948, it was held that part-time or volunteer firemen contributing two per cent of their earnings to the firemen's relief and pension fund, prior to September 25, 1947, were "members of the fire department" and "members of the fund."

However, Section 4612-4, General Code, was revised, effective August 26, 1949, so as to exclude part-time and volunteer firemen.

Former Section 4612-4, General Code, is now Section 741.18, Revised Code.

Section 741.18, Revised Code, provides for death and retirement benefits for firemen injured and disabled as well as benefits for dependents of members of the firemen's relief and pension fund. The last paragraph of Section 741.18, Revised Code, reads as follows :

“* * *

“ ‘Retired firemen’ as used in this division, does not include any person whose retirement resulted or results from service as a volunteer or part-time fireman. Any person retiring as a result of such service is not entitled to any right granted under this division.”

Volunteer firemen have no civil service status and do not receive annual salaries from which they could contribute four per cent to qualify as members of the fund; hence, in answer to your first question, volunteer firemen are not members of the fund of firemen's relief and pension funds and are not eligible to share in the benefits of such a fund.

Chapter 3310., of the Revised Code, was enacted by the Legislature to provide relief and assistance to volunteer members and their dependents. If volunteer firemen were covered by firemen's relief and pension funds created by Sections 741.01 to 741.25, inclusive, of the Revised Code, there would have been no reason for the enactment of Chapter 3310., Revised Code.

In answer to your second question, Section 3310.09, Revised Code, requires membership of a political subdivision or fire district in the Volunteer Firemen's Dependents Fund when volunteer firemen are employed, and also provides for payment of initial premiums. This section reads as follows :

"Each political subdivision or fire district maintaining in whole or in part a volunteer fire department, or which employs volunteer firemen as defined in section 3310.01 of the Revised Code, is hereby declared to be a member of the fund and shall, on or before November 1, 1957, pay to the treasurer of the state of Ohio, to the credit of the volunteer firemen's dependents fund, the initial premiums set forth as follows :

"(A) Class one; those having an assessed property valuation of less than seven million dollars; a premium of three hundred dollars.

"(B) Class two; those having an assessed property valuation of seven million dollars but less than fourteen million dollars; a premium of three hundred fifty dollars.

"(C) Class three; those having an assessed property valuation of fourteen million dollars but less than twenty-one million dollars; a premium of four hundred dollars.

"(D) Class four; those having an assessed property valuation of twenty-one million dollars but less than twenty-eight million dollars; a premium of four hundred fifty dollars.

"(E) Class five; those having an assessed property valuation of twenty-eight million dollars or over; a premium of five hundred dollars."

Your second question must, therefore, be answered in the affirmative.

Since your letter states that the city of Struthers uses the services of volunteer firemen, the payment of the \$500, as initial premium, was proper and no refund of the same would appear to be in order.

Accordingly, it is my opinion and you are advised that volunteer firemen do not qualify for membership in the Firemen's Relief and Pension Fund authorized by Section 741.01, Revised Code; and Section 3310.09, Revised Code, requires political subdivisions and fire districts employing volunteer firemen to be members of the Volunteer Firemen's Dependents Fund and to pay the premium required by said section.

Respectfully,

MARK McELROY
Attorney General